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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/726,457	12/03/2003	Timothy E. Allen	LOT920030035US1	6712
23550 7590 08/07/2007 HOFFMAN WARNICK & D'ALESSANDRO, LLC 75 STATE STREET 14TH FLOOR ALBANY, NY 12207			EXAMINER CHEEMA, UMAR	
			ART UNIT 2144	PAPER NUMBER
			MAIL DATE 08/07/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/726,457

Applicant(s)

ALLEN ET AL.

Examiner

Umar Cheema

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12/03/2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 101

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Software, *per se*:

The claims lack the necessary physical articles or objects to constitute a machine or a manufacture within the meaning of 35 USC 101. They are clearly not a series of steps or acts to be a process nor are they a combination of chemical compounds to be a composition of matter. As such, they fail to fall within a statutory category. They are, at best, functional descriptive material *per se*.

Descriptive material can be characterized as either "functional descriptive material" or "nonfunctional descriptive material." Both types of "descriptive material" are nonstatutory when claimed as descriptive material *per se*, 33 F.3d at 1360, 31 USPQ2d at 1759. When functional descriptive material is recorded on some computer-readable medium, it becomes structurally and functionally interrelated to the medium and will be statutory in most cases since use of technology permits the function of the descriptive material to be realized. Compare *In re Lowry*, 32 F.3d 1579, 1583-84, 32 USPQ2d 1031, 1035 (Fed. Cir. 1994)

Merely claiming nonfunctional descriptive material, i.e., abstract ideas, stored on a computer-readable medium, in a computer, or on an electromagnetic carrier signal, does not make it statutory. See *Diehr*, 450 U.S. at 185-86, 209 USPQ at 8 (noting that the claims for an algorithm in *Benson* were unpatentable as abstract ideas because "[t]he sole practical application of the algorithm was in connection with the programming of a general purpose computer.").

Examples:

1. A computer program product for . . .

Claims 17-23 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
 2. Ascertaining the differences between the prior art and the claims at issue.
 3. Resolving the level of ordinary skill in the pertinent art.
 4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
3. Claims 1-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Virta (US 2005/0065832) in view of Wies et al. (Wies) (US 7,159,008).

Regarding claim 1, Virta discloses a method for comparing free time for members of a chat, comprising: storing individual calendars corresponding to each member of the chat (par. [0013]; user's personal time, and storing at least one respective interval of time); initiating a free time comparison (par. [0002]; free time slots); and combining the individual calendars corresponding to each member of the chat into a free time summary calendar (par. [0012]; combine two or more calendar databases into one combined calendar database), wherein the free time summary calendar indicates at least one of free time periods that are simultaneously available to all of the members of

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the chat (par. [0002]; simultaneous free time slot, par. [0014]) and conflict time periods during which at least two chat members simultaneously have an event scheduled (fig. 1, par. [0031]; scheduling conflict).

Virta does not explicitly disclose wherein said chat interface. However in the same field of invention, Wies includes chat interface (see col. 2, lines 5-15; chat interface). It would have been obvious to one of the ordinary skill in the art at the time of the invention to combine the teaching of Virta and Wies for comparing free time for chat members. Motivation for doing so would have been comprises a user calendar database for integrating data from the personal time recorder and the interval storage unit into the electronic schedule (see Virta: par. [0015], lines 5-8).

Regarding claim 2, the combination of Virta and Wies disclose the method of claim 1, further comprising: providing each member of the chat with a chat interface (see Wies: col. 2, lines 5-15; chat interface), wherein the chat interface allows at least one chat member to initiate the free time comparison (Virta: par. [0002]; free time slots).

Regarding claim 3, Virta discloses the method of claim 1, wherein the free time summary calendar indicates free time periods and conflict time periods in a format selected from the group consisting of a day view format, week view format, and month view format (par. [0024]).

Regarding claim 4, Virta discloses the method of claim 3, wherein the day view format and the week view format indicate free time periods and conflict time periods during a predetermined time span (par. [0014], [0024], [0031]).

Regarding claim 5, Virta discloses the method of claim 3, wherein the day view format and the week view format indicate free time periods that are simultaneously available to all of the members of the chat (par. [0002]; simultaneous free time slot, par. [0024]).

Regarding claim 6, Virta discloses the method of claim 3, wherein the month view indicates free days during which there is at least one simultaneously available free time period for all of the members of the chat (par. [0002]; simultaneous free time slot, par. [0014]), and conflict days during which there are no simultaneously available free time periods for all of the members of the chat (fig. 1, par. [0031]; scheduling conflict).

Regarding claim 7, Virta discloses the method of claim 3, further comprising: switching between the day view format, week view format, and month view format (par. [0024]).

Regarding claim 8, Virta discloses a system for comparing free time for members of a chat, comprising: a storage unit for storing individual calendars corresponding to each member of the chat (par. [0013]; user's personal time, and storing at least one respective interval of time); a system for initiating a free time comparison (par. [0002]; free time slots); a free time summary calendar system for combining the individual

calendars corresponding to each member of the chat into a free time summary calendar (par. [0012]; combine two or more calendar databases into one combined calendar database), wherein the free time summary calendar indicates at least one of free time periods that are simultaneously available to all of the members of the chat ((par. [0002]; simultaneous free time slot, par. [0014]) and conflict time periods during which at least two chat members simultaneously have an event scheduled (fig. 1, par. [0031]; scheduling conflict); and a display for displaying the free time summary calendar (par. [0012]).

Virta does not explicitly disclose wherein said chat interface. However in the same field of invention, Wies includes chat interface (see col. 2, lines 5-15; chat interface). It would have been obvious to one of the ordinary skill in the art at the time of the invention to combine the teaching of Virta and Wies for comparing free time for chat members. Motivation for doing so would have been comprises a user calendar database for integrating data from the personal time recorder and the interval storage unit into the electronic schedule (see Virta: par. [0015], lines 5-8).

Regarding claim 9, the limitation of this claim has already been addressed above (see claim 2 above).

Regarding claim 10, the limitation of this claim has already been addressed above (see claim 3 above).

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Regarding claim 11, the limitation of this claim has already been addressed above (see claim 4 above).

Regarding claim 12, the limitation of this claim has already been addressed above (see claim 5 above).

Regarding claim 13, the limitation of this claim has already been addressed above (see claim 6 above).

Regarding Independent claim 14, the limitation of this claim has already been addressed above (see Independent claims 1 and 8 above).

Regarding claim 15, the limitation of this claim has already been addressed above (see claim 3 above).

Regarding claim 16, the limitation of this claim has already been addressed above (see claim 7 above).

Regarding Independent claim 17, the limitation of this claim has already been addressed above (see Independent claim 1 above) except a program stored on a

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recordable medium for comparing free time for members of a chat, which Virta discloses (see abstract, par. [0014], [0034]; computer readable medium).

Regarding claim 18, the limitation of this claim has already been addressed above (see claim 2 above).

Regarding claim 19, the limitation of this claim has already been addressed above (see claim 3 above).

Regarding claim 20, the limitation of this claim has already been addressed above (see claim 4 above).

Regarding claim 21, the limitation of this claim has already been addressed above (see claim 5 above).

Regarding claim 22, the limitation of this claim has already been addressed above (see claim 6 above).

Regarding claim 23, the limitation of this claim has already been addressed above (see claim 7 above).

Conclusion

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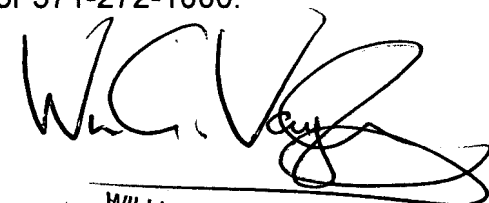
4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Please refer to form PTO-892 (Notice of Reference Cited) for a list of relevant art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Umar Cheema whose telephone number is 571-270-3037. The examiner can normally be reached on M-F 8:00AM-5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William Vaughn, Jr. can be reached on 571-272-3922. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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